



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Halki Paint Contractors, Inc.

File: B-244739

Date: November 18, 1991

Antonios Sfirou for the protester,
Paul M. Fisher, Esq., and James N. McCutcheon, Esq.,
Department of the Navy, for the agency.
Henry J. Gorczycki and James A. Spangenberg, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

A certified check is not an acceptable form of bid guarantee on Department of Defense construction solicitations where the solicitation specifically limits, as permitted by regulation, acceptable types of bid guarantees to bid bonds or public debt obligations of the United States.

DECISION

Halki Paint Contractors, Inc. protests the rejection of its bid submitted in response to invitation for bids (IFB) No. N62470-90-B-6331 issued by the Department of the Navy for interior/exterior painting at Naval Hospital, Portsmouth, Virginia. The Navy determined the bid was nonresponsive because the submitted bid guarantee did not conform with the solicitation's requirements.

We deny the protest.

The IFB required a bid guarantee in the amount of 20 percent of the bid price not to exceed \$3 million. Bid opening was at 2:00 p.m. on May 23, 1991. Halki submitted its bid of \$52,895 accompanied by a certified check in the amount of \$10,579 as its bid guarantee. The next lowest bid was \$55,181.25.

The Navy determined Halki's bid was nonresponsive because a certified check was not an acceptable form of bid guarantee as specified in the IFB. Halki argues that a certified check is an acceptable bid guarantee. We agree that the Navy properly rejected the bid because, in this case, a certified check was not a permissible bid guarantee on this IFB.

As a general rule, where a bid guarantee is required, the bidder may provide any type of bid guarantee. Federal Acquisition Regulation (FAR) § 28.101-1(b); MK Consultants & Assocs., Inc., B-242059, Feb. 26, 1991, 91-1 CPD ¶ 221. However, procuring agencies also have the discretion under the FAR to specify that only "separate bid bonds" are acceptable for construction contracts. Id. The Department of Defense (DOD) exercised the discretion permitted by FAR § 28.101-1(b) in promulgating DOD FAR Supplement (DFARS) § 228.101-1, which provides that only separate bid bonds and specified types of public debt obligations may be provided as bid guarantees for DOD construction contracts.¹ Bidders are put on notice of this requirement by the inclusion of DFARS § 252.228-7007 in the IFB, which states in pertinent part:

"(a) The Offeror (Bidder) shall furnish a separate bid bond, or United States bonds, Treasury notes or other public debt obligations of the United States, in the proper form and amount, by the time set for opening of bids. Failure to do so may be cause for rejection of the bid. . . ."


Since a certified check is not listed as an acceptable bid guarantee for this IFB,² Halki's bid was properly rejected

¹The stated reason for limiting the acceptable types of bid guarantees was to avoid the additional risk and burden of safekeeping, and returning to the contractor, assets furnished as security. 52 Fed. Reg. 48,549 (1987). We note that the revised DFARS, which will be effective December 31, 1991, do not contain sections 228.101-1 and 252.228-7007. 56 Fed. Reg. 36,280 (1991); 55 Fed. Reg. 39,788 (1990). DOD states that it considered FAR § 28.101-1 to be sufficient to address bid guarantees related to construction contracts. Id. It appears that the effect of this change will be to permit all types of separate bid guarantees, including certified checks, to be acceptable. FAR §§ 28.101-1(b); 28.101-3(b); 52.228-1.

²A certified check is a check for which a bank has certified that the signature on the check is genuine and that the bank has set aside funds equal to the amount of the check which will be used only to pay that check. We note that certified checks offer some advantages over bid bonds because the government has immediate access to funds without regard to any defenses that sureties might raise. See Castle Floor Covering, B-242718, May 28, 1991, 91-1 CPD ¶ 510.

as nonresponsive. See MK Consultants & Assocs., Inc., supra. In view of the authority that has been granted DOD to require separate bid bonds on construction contracts, the fact that certified checks are ordinarily acceptable security is irrelevant. Id.

The protest is denied.


for James F. Hinchman
General Counsel